

The claimant appeared by and through her attorney, Mitchell D. Wulfekoetter of Topeka, Kansas. The respondent and insurance carrier appeared by and through their attorney, Mickey W. Mosier of Salina, Kansas. The Kansas Workers Compensation Fund appeared by and through its attorney, Jeffrey E. King of Salina, Kansas. There were no other appearances.

RECORD

The record as specifically set forth in the Award of the Administrative Law Judge is herein adopted by the Appeals Board.

STIPULATIONS

The stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

- (1) What is the nature and extent of claimant's injury and disability?
- (2) Were the claimant's objections regarding portions of certain depositions in the record appropriate and should portions of said depositions be excluded from the record?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, and in addition the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

The Administrative Law Judge denied claimant additional benefits in the Award of April 15, 1994, finding that claimant had failed to sustain her burden of proof in alleging an increase in disability pursuant to K.S.A. 44-528. The Appeals Board finds the findings of fact and conclusions of law set out by the Administrative Law Judge in said Award are appropriate and well stated and said findings and conclusions are herein adopted by the Appeals Board as its own.

A review and modification is based on the existence of new facts, a change in the condition of the worker's capacity, which renders the former award either excessive or inadequate. The burden of proving the changed condition of the claimant is upon the party asserting it. Gile v. Associated Co., 223 Kan. 739, 576 P.2d 663 (1978).

The Administrative Law Judge found the deposition testimony of Dr. Ali B. Manguoglu to be very persuasive. The Appeals Board agrees. Dr. Manguoglu felt claimant's condition had not changed subsequent to the April 6, 1993, settlement. He also felt the restrictions placed upon claimant prior to said settlement were identical to the restrictions placed upon claimant subsequent to said settlement.

The Appeals Board finds claimant has failed in the burden of proof required by K.S.A. 44-528 and as such any review and modification award modifying the original Award of April 6, 1993, should be denied.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Review and Modification Award of Administrative Law Judge George R. Robertson dated April 15, 1994, is affirmed in all respects and claimant is denied additional award in excess of that specified in the April 6, 1993, Award.

Future medical will be granted upon proper application to and approval by the Director.

The fees necessary to defray the expenses of the administration of the Workers Compensation Act are hereby assessed against the respondent and its insurance carrier to be paid as follows:

OWENS, BRAKE & ASSOCIATES

Deposition of Jerry Eilers Dated November 23, 1992	\$ 279.10
Deposition of Sandra Stone Dated November 23, 1992	\$ 369.90
Deposition of Dr. Ali Manguoglu Dated September 23, 1993	\$ 189.80
Review & Mod Hearing Transcript Dated November 3, 1993	\$ 281.90
Deposition of Jerry Eilers Dated November 22, 1993	\$ 336.14
Deposition of Monty Longacre Dated December 8, 1993	\$ 166.26
Deposition of Sandy Stone Dated January 18, 1994	\$ 376.35

MARIA MENDIOLA

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DOCKET NO. 155,618

Deposition of Denise McDowell
Dated January 18, 1994

\$ 144.05

Total

\$2143.50

GENE DOLGINOFF ASSOCIATES, LTD.

Deposition of Michael Dreiling
Dated November 23, 1993

\$ 489.85

APPINO & ACHTEN REPORTING SERVICE

Deposition of Dr. Craig Yorke
Dated December 9, 1993

\$ 167.40

IT IS SO ORDERED.

Dated this ____ day of March, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Mitchell D. Wulfekoetter, Topeka, KS
Mickey W. Mosier, Salina, KS
Jeffrey E. King, Salina, KS
George R. Robertson, Administrative Law Judge
George Gomez, Director